



Guidance Issued on New York Paid Sick Leave

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On December 22, 2021, the New York Department of Labor (“NYDOL”) issued guidance in response to stakeholder comments about the New York Sick Leave Law (“NYSLL”). This guidance provides clarity on a variety of implementation topics and does not alter or amend prior NYSSL regulations issued in December 2020.

Background

All New York employers are subject to the NYSSL. The amount of sick leave that must be made available is determined based on the size of the employer as follows:

- Employers with less than 100 employees nationwide will be required to provide up to 40 hours of paid sick time per calendar year, although unpaid sick leave is required for employers with fewer than five employees and income less than \$1 million in the prior tax year.
- Employers with 100 or more employees nationwide will be required to provide 56 hours of paid sick time per calendar year.

Employees will accrue 1 hour of sick time for every 30 hours worked and begin to accrue hours toward sick leave beginning as of their date of hire. Sick time may be used for an employee’s own, or a family member’s mental or physical

illness, preventive care or care and services related to domestic violence.

Recent Guidance

Summarized below are highlights from the recent guidance to address stakeholder comments:

- All employees of the employer nationwide are to be considered in determining employer size for the application of the NYSSL, although sick leave rights only apply to employees in New York state.
- Employees may carry-over an unlimited number of unused sick leave hours to the following year. Employers however are permitted to limit the leave taken in any year to the maximum amount required to be provided to such employee (e.g., 40 hours for midsize employers and 56 hours for large employers).
- While the statute requires that employers carry over unused sick leave to the next calendar year, employers have the option to: (1) give employees the choice to voluntarily elect to use and receive payment for paid sick leave prior to the end of a calendar year or carry over unused sick leave; or (2) only allow employees to carry over unused sick leave.

- Employees must be allowed to use sick leave time upon accrual of the sick leave hours. No additional waiting period may be imposed. Employers that front-load sick time hours must permit newly hired employees to utilize their sick leave at date-of-hire.
- An employer may not deny an employee leave while attempting to confirm the basis for the leave. If the employer discovers the request to be false or fraudulent, disciplinary action may be taken against the employee. Employers are cautioned to not penalize or otherwise retaliate against an employee for submitting such a request or attestation.
- The NYDOL does not believe a documentation requirement for leave less than three days is necessary for investigation into potential employee abuse of sick leave and otherwise believes documentation requirements are sufficient.
- The NYDOL intends to publish a template that employees may use to attest to the need for sick leave.

Employer Action

Employers with New York employees should review the latest guidance and work with counsel to ensure adherence to the sick leave statute, implementing regulations and the latest guidance.